



ALAN WILSON  
ATTORNEY GENERAL

April 2, 2013

Sammy G. Diamaduros, Esquire  
Union County Attorney  
Post Office Box 643  
Union, South Carolina 29379

Dear Mr. Diamaduros:

Attorney General Alan Wilson has referred your letter of January 9, 2013 to the Opinions section for a response. The following is our understanding of your questions presented and the opinion of this Office concerning the issues based on that understanding.

**Issues presented in your letter:**

- 1) Is the Union County supervisor considered an elected official per S.C. Code § 4-9-30(7) and generally speaking?
- 2) Does the supervisor fall within the scope of the county's personnel policy?
- 3) Is county council itself (as opposed to or in addition to the county supervisor) authorized to hire and fire a county employee?
- 4) Is county council authorized to reinstate an employee fired by the supervisor? [In other words are employees of the county supervisor subject to the county personnel policies and procedures for both employment and discharge including interviews and grievance rights and appeals to county council?]
- 5) If county council does have the authority to fire a county employee or have an employee reinstated that is fired by the supervisor, what type of majority would county council have to have to do so?

**Answers:**

Based off of information you supplied, it is this Office's understanding that Union County currently operates under a County-supervisor form of government pursuant to S.C. Code § 4-9-20(b) (1976 Code, as amended). Therefore, the answers below are written accordingly.

- 1) **Yes, a supervisor in a council-supervisor form of government** under S.C. Code § 4-9-20(b) (1976 Code, as amended) **is an elected official** based on S.C. Code § 4-9-410 both generally speaking and for purposes of S.C. Code § 4-9-30(7) (see Answer 2 below).
- 2) **No, as an elected official, the supervisor does not fall within the authority of personnel policies and procedures for county employees.** S.C. Code § 4-9-30(7) gives county councils power "to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people...This employment

and discharge authority does not extend to personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government..." S.C. Code § 4-9-410 says regarding a council-supervisor form of county government:

"...The supervisor shall be a qualified elector of the county, elected at large from the county in the general election for a term or two or four years."

This Office previously answered this question for Union County in a prior opinion, which the applicable information is quoted below:

"Clearly the supervisor is directly elected by the people and thus is not to be regulated by the county's personnel system policies and procedures. Where, as here, the terms of a statute [4-9-410] are unambiguous, such terms must be applied according to their literal meaning. State v. Salmon, 279 S.C. 344, 306 S.E.2d 620 (1983). In the event of a conflict between state laws and local ordinances, state laws will prevail. Law v. City of Spartanburg, 148 S.C. 229, 146 S.E. 12 (1928). Thus, we must conclude that personal ordinances of Union County would not be applicable to the county supervisor, who is directly elected by the people of Union County."

Op. S.C. Atty. Gen., 1987 WL 245436 (March 31, 1987).

- 3) Under a county-supervisor form of government, a court in South Carolina is likely to find a **county council may not hire a county employee, but county council would have the ability to create a position and to fund it. County council may fire a county employee** whom the county supervisor or any of his employees appointed **with two-thirds** of the council members **present and voting**. South Carolina Code § 4-9-430 says:

"The council shall not remove any county administrative officers or employees whom the county supervisor or any of his subordinates are empowered to appoint, unless by two-thirds vote of the members present and voting. Except for the purposes of inquiries and official investigations, neither the council nor its members shall give direct orders to any county officer or employee, either publicly or privately..."

In regards to the duties of a supervisor in a council-supervisor form of government, S.C. Code § 4-9-420(12) says:

"[The powers and duties of the supervisor shall include, but not be limited to, the following: ...] to be responsible for employment and discharge of personnel subject to the provisions of subsection (7) of § 4-9-30 and subject to the appropriation of funds by the council for that purpose."

If the law is not clear enough on its face, the Supreme Court in South Carolina has previously answered this question concerning a controversy between a supervisor and a county council concerning who had the right to hire and fire the county attorney. Poore v. Gerrard, 271 S.C. 1, 244 S.E.2d 510 (1978). In that case the Supreme Court held concerning S.C. Code § 4-9-430 “under [S.C. Code §] 4-9-30(7) county council has the duty and responsibility to provide for personnel to operate the county functions over which it is granted control and to appropriate funds for the employment of such personnel. Section 4-9-420(12), dealing specifically with the county supervisor form of government, makes the county supervisor ‘responsible for the employment and discharge of personnel subject to the provisions of subsection 7 of Section 4-9-30’ and for which council has appropriated funds, i.e., county council is empowered to create and fund positions for the operation of county government, but personnel to fill such positions shall be appointed by the county supervisor. This conclusion is reinforced by further provisions of Section 4-9-430... such power to employ personnel [under S.C. Code § 4-9-420(12)] is limited, first, by the existence of a position to fill and, second, by the appropriation of funds with which to pay the employee.” Id. The supervisor has the power to hire and fire county personnel coming within the jurisdiction of county council, but that power is limited by county council creating a position and funding such a position. In addition to the supervisor having the right to discharge the county employee hired by the supervisor, county council may also discharge the county employee, but it must have a two-thirds majority to do so. Id.

- 4) Refer to Answer 3. In regards to the county personnel policies and procedures for both employment and discharge including interviews and grievance rights and appeals to county council, S.C. Code § 4-9-30(7) says [a county government shall have the following enumerated powers...]:

“to develop personnel system **policies and procedures** for county employees by which **all county employees** are regulated **except those elected directly by the people**, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. **This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government.** Any employee discharged shall follow the grievance procedures as established by county council in those counties where the grievance procedures are operative, retaining all appellate rights provided for in the procedures. In those counties where a grievance procedure is not established...”

(emphasis added).

As a background on statutory interpretation, the cardinal rule in statutory interpretation is to ascertain the intent of the Legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute’s interpretation must be

“practical, reasonable, and fair” and consistent with the purpose, plan and reasoning behind its making. *Id.* at 816. Statutes are to be interpreted with a “sensible construction,” and a “literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose.” *U.S. v. Rippetoe*, 178 F.2d 735, 737 (4th Cir. 1950). This Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. *Sloan v. SC Board of Physical Therapy Exam.*, 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory construction is the intent of the legislature, not the language used. *Spartanburg Sanitary Sewer Dist. v. City of Spartanburg*, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing *Abell v. Bell*, 229 S.C. 1, 91 S.E.2d 548 (1956)).

A plain reading of the statute would reasonably be that **employees of the county supervisor (or any individual elected official) would not be subject to the county personnel policies and procedures for both employment and discharge including interviews**<sup>1</sup>. However, this Office is told the issue remains unclear to some whether employees have grievance rights based on the remaining language starting with “[a]ny employee discharged shall follow...” pursuant to S.C. Code § 4-9-30(7), as quoted above. Therefore, let us examine the statute’s history to see the legislative intent.

The 1962 code § 14-3703(7) [now § 4-9-30(7) of the 1976 Code, as amended] granted any employee discharged by an elected official, administrator, or designated department head a public hearing before the entire county council. The applicable language from the 1962 code reads:

(7) “To develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government but this authority shall not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government. Any employee discharged by the administrator, elected official or designated department head shall be granted a public hearing before the entire county council if he submits a request in writing to the clerk of the county council within five days of receipt of notice of discharge. The hearing shall be held within fifteen days of receipt of notice of discharge. The employee shall be relieved of his duties pending the hearing and in the event a majority of the county council sustains the discharge, it shall be final subject to judicial review, but if a majority of the county council reverses the dismissal the employee shall be reinstated and paid a salary for such time as he was suspended from his employment.”

Notwithstanding the above provisions of this subsection, any employee who is discharged may elect to submit his grievances concerning his discharge to a county grievance committee in those counties where such committees are operative and in

---

<sup>1</sup> Please note Answer 1 above where we already answered that a county supervisor in a council-supervisor form of government under S.C. Code § 4-9-20(b) (1976 Code, as amended) is an elected official based on S.C. Code § 4-9-410 both generally speaking and for purposes of S.C. Code § 4-9-30(7).

such case his discharge will be reviewed in the manner provided for in the rules of that committee retaining all appellate rights therein provided for...”

S.C. Code § 14-3703 (1962 Code) (emphasis added).

The 1988 amendment to the section changed the sentences to make it clear the employment and discharge powers given to county council do not apply to those hired by an elected official and thus, understandably, would apply to grievance rights and appeals as they would be considered a discharge power<sup>2</sup>. S.C. Code § 4-9-30(7) (1976 Code, as amended). This clear reading also seems to be supported by the courts. The Fourth Circuit Court of Appeals ruled South Carolina’s probate court’s clerks of court were not county employees but employees of the probate judge, an elected official, and therefore, they had no rights to a grievance hearing upon termination. Amos-Goodwin v. Charleston County Council et al., 161 F.3d 1 (4<sup>th</sup> Cir. 1998)(1998 WL 610650). **As far as grievance rights and appeals are concerned, if any such process would result in the reinstatement by county council of an employee previously discharged by an elected official (or an official appointed by authority outside of county government), that process would remove that official’s authority to hire and fire his own employees who serve at his pleasure.** See Morris v. SC Workers’ Comp. Comm., 370 S.C. 85, 634 S.E.2d 651 (2006); Heath v. Aiken County, 295 S.C. 416, 368 S.E.2d 904 (1988)<sup>3</sup>; Anders v. County Council for Richland County, 284 S.C. 142, 325 S.E.2d 538 (1985). Along those same lines, the South Carolina Court of Appeals held that “absent explicit statutory authority, a county administrator or other governing body simply lacks the power to suspend the employees of an elected official.” Eargle v. Horry County, 335 S.C. 425, 432, 517 S.E.2d 3, 7 (Ct. App. 1999).

This Office has also issued prior opinions consistent with that interpretation. See Op. S.C. Atty. Gen., 2011 WL 6120333 (November 18, 2011) (affirming the October 21, 2011 and April 29, 2011 opinions); 2011 WL 5304074 (October 21, 2011) (affirming that county veteran’s affairs officers are officers of the county but not employees of the county subject to the county delegation who selected them and serve at the delegation’s pleasure); 2011 WL 1740743 (April 29, 2011) (opining that county council has no authority concerning the employment or discharge of personnel employed by an elected official in that county); 2007 WL 419432 (January 8, 2007) (opining that a county council lacked the authority to terminate employees of an elected official and was dubious that the council would be permitted to reduce appropriations so as to indirectly terminate the position of such employees); 1993 WL 524252 (November 23, 1993) (opining that jail employees employed under an elected official were not entitled to county grievance rights); 1991 WL 633035 (August 8, 1991) (opining that employees of a county magistrate’s office were

---

<sup>2</sup> For additional discussion on the 1988 amendment, please see Op. S.C. Atty. Gen., 1988, WL 383551 (September 14, 1988), as referenced in the following paragraph.

<sup>3</sup> There still tends to be confusion concerning S.C. Code § 4-9-30(7) in regards to the reading of the Heath case. It should be noted that a footnote in Heath v. County of Aiken (aka Heath I) clarified a ruling in Heath v. County of Aiken (aka Heath II), 302 S.C. 178 394 S.E.2d 709 (1990). It reads “Section 4-9-30(7) was amended effective February 24, 1988, to clarify references relating to county grievance procedures. The amendment was NOT in effect when Sheriff Heath’s declaratory judgment action was filed or ruled upon by the lower court.” Heath v. County of Aiken, 295 S.C. 416, 368 S.E.2d 904 (1988) (emphasis added). Also, see Op. S.C. Atty. Gen., 1988 WL 383551 (September 14, 1988) as quoted above.



county employees pursuant to S. C. Code § 22-8-30 but were hired and fired by the magistrate pursuant to S.C. Code § 4-9-30(7) without grievance rights, as the magistrate was an official appointed by an authority outside of county government); 1989 WL 508601 (October 26, 1989) (opining that the legislative intent of the 1988 amendment to S.C. Code § 4-9-30(7) was that an employee of the county magistrate was an employee of a public official appointed by an authority outside of the county government, and therefore was not entitled to a grievance hearing pursuant to S.C. Code § 4-9-30(7)); 1988 WL 383551 (September 14, 1988) (opining that “it is the opinion of this Office that the recent decision of the State Supreme Court in Heath v. County of Aiken, is solely applicable to Section 4-9-30(7) as it read prior to its being amended this year by the General Assembly. However, with this amendment, no employee of an elected official, such as a sheriff, who is discharged by such official, is entitled to a grievance hearing under Section 4-9-30(7).”). Nevertheless, it is worth distinguishing that **employees of an elected official who are not subject to working at the pleasure of the elected official may possibly be subject to county grievance rights and procedures** by county council. Op. S.C. Atty. Gen., 1986 WL 289871 (July 3, 1986) (citing S.C. Code § 4-9-30(7) and Op. S.C. Atty. Gen., 1985 WL 259237 (December 11, 1985)<sup>4</sup>).

Please note this Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). Furthermore, “[t]he absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views suppressed therein were consistent with the legislative intent.” Op. S.C. Atty. Gen., 2005 WL 2250210 (September 8, 2005) (citing Scheff v. Township of Maple Shade, 149 N.J.Super. 448, 374 A.2d 43 (1977)). However, as stated below, this is only a legal opinion, and a court may construe otherwise.

- 5) Refer to Answer 3 for an explanation on county council’s right to hire and fire, and refer to Answer 4 concerning reinstatement. A two-thirds majority on a council of six members is four members who must be present and must vote to remove any county administrative officers or employees under S.C. Code § 4-9-430. However, even if less than six members are present, then it still must be two-thirds of the members present and voting, according to the statute. See S.C. Code § 4-9-430.

---

<sup>4</sup> Please note these opinions were written before the 1988 amendment to S.C. Code § 4-9-30(7) giving the exception to employees of elected officials (or an official appointed by authority outside of county government). This Office feels there is a possibility a court may still uphold this caveat, if there are even any such employees who exist who are not employed or directed by an elected official (or an official appointed by authority outside of county government), especially in regards to a council-supervisor form of county government. However, this Office was not given, nor would it be able to go into detailed analysis of, the various positions that would and would not be considered both “at the pleasure of” and directly employed by the county supervisor or other elected official but would leave that up to the discretion of the courts as the ultimate fact finders until and unless there is legislative clarification in the meantime.

Mr. Diamaduros  
Page 7  
April 2, 2013

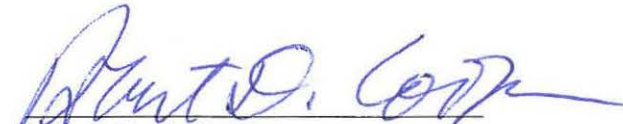
**Conclusion:** This office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita Smith Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General